



STATE OF CONNECTICUT
DEPARTMENT OF CONSTRUCTION SERVICES



Testimony in Support of Raised Senate Bill 977
An Act Concerning The Membership of Construction Service Panels and The
Evaluation of Bidders' Past Performance

Government Administrations & Elections Committee
March 11, 2013

Raised Senate Bill 977, An Act Concerning The Membership of Construction Service Panels and The Evaluation of Bidders' Past Performance proposes a series of minor panel changes.

C.G.S. 4b-56 establishes within DCS state construction services selection panels and Connecticut Health and Education Facilities Authority construction services panels. These panels consider qualifications submitted by consultants in response to a publicly advertised invitation for consultant services concerning construction, reconstruction, alteration, remodeling, repair or demolition of any state building or facility. When consultant services are required by DCS for a project, DCS invites responses from consultant firms. The construction services construction panels review the qualifications of the consultants and select at least three firms determined by the panels to be the most qualified according to agency criteria and state statutes. The panels submit the list of the most qualified firm to the Commissioner for the award of the contract.

Subsection 4b-56(a) provides there shall be established within the DCS state construction services selection panels which shall consist of five members. Four of such members shall be appointed by the commissioner, shall serve only for the deliberations involving the project for which such members are appointed, and shall be current or retired employees of DCS. The remaining member shall be appointed by the head or acting head of the user agency and shall serve only for deliberations involving the project for which such member is appointed.

Section 1 would provide that full panel activities only pertain to projects estimated at more than \$5 million dollars. For smaller projects, DCS would like to reduce the panel membership to 3 members — Two (2) DCS current or retired employees and one (1) from the client agency.

In addition, DCS would like a reduction in the panel membership from 5 members to 3 members for on-call contracts in subsection 4b-56(e).

DCS projects staff took the list of current projects and our calculations indicate the following:

- 61% of these projects are under \$5,000,000 (some of these might be Agency Administered (AA) projects, but are being administered by the teams).
- This reflects 137 total projects, 87 of which could save: *87 projects x 2 staff members x 14 hours/year, resulting in the conservative number of 2,436 hours* that can be used for more productive time on our project management.

With a lean staff, DCS is providing over 140 hours per individual each year to these selection panels. For small projects we believe that a smaller panel will be able to provide the same service with the same quality and more efficiency. This reduction will increase the effectiveness of the use of DCS staff and reduce the time away from their primary functions.

Similar to the panels that select consultants, C.G.S. Sec. 4b-100a establishes construction services award panels that perform the function of considering and selecting the most qualified design-build team under C.G.S. Sec. 4b-24 and general contractors under Sec. C.G.S. 4b-91(g). Section 2 would reduce the (6) member panel outlined in C.G.S. 4b-100a to (5) by eliminating the neutral party from the panel structures. The client agency has considerable presence on the panel (2) appointed members from the client agency, and three (3) from DCS. The appointment of the screening panel and the interview panel for design-build projects can occur more quickly without requiring another agency to provide a professional staff member to serve as a neutral panel member, particularly when his or her time could be spent doing that agency's work.

The proposed changes to C.G.S. Sec. 4b-92 set forth in Section 3 clarifies that DCS, as part of its due diligence when considering a bidder's qualifications and responsibility, as part of its due diligence when considering a bidder's past performance, an awarding shall evaluate the bidder's past percentage of change orders, past assertions of unsubstantiated claims, and the bidder's overall performance regarding project completion within the budget established for the project to information an awarding authority may consider when reviewing a bid statement. DCS has in past, and believes that it is right to do so in the future, consider such information when it conducts its

evaluation of the lowest responsible and qualified bidder. This information relates directly to the bidder's integrity, which is already a statutory evaluation criteria. The statutory change provides notice to contractors and subcontractors that this information will be part of such evaluations.

DCS understands that "change-orders" occur routinely on construction projects resulting from design issues and owner requests, and maintains a contingency to address these change orders. That being said, there are instances where individual contractors consistently submit higher percentages of change order proposals than other contractors and/or submit inflated claims without substantiation, all of which costs the state considerable time and money to refute. Recently, one court decision rejected a contractor's claim in its entirety and awarded the state liquidated damages, but only after the state incurred considerable expense on the claim. We believe that this type of information can and should be part of the state's consideration of the contractor's integrity in its work performance.

DCS, it should be noted, does provide an apparent low bidder ample opportunity to address and explain any issue that appears to negatively impact it being found responsible and qualified prior to any determination is made by the agency.

Thank you again for the opportunity to testify. If the Committee has additional questions for my staff please feel free to contact Terrence Tulloch-Reid at (860) 713-5085.

